

settlement include a monetary offer in compromise considered satisfactory to the appropriate TTB officer, in which event the proceeding shall be held in abeyance pending final action on such monetary offer in compromise.

[T.D. ATF-244, 51 FR 45762, Dec. 22, 1986, as amended by T.D. ATF-374, 61 FR 29957, June 13, 1996]

#### § 71.37 Notice of contemplated action.

Where the appropriate TTB officer believes that the matter may be settled informally, i.e., without formal administrative proceedings, he shall, in accordance with section 5 (b) of the Administrative Procedure Act, prior to the issuance of a citation, inform the permittee of the contemplated issuance of an order to show cause why his permit should not be suspended, revoked or annulled, and that he is being given an opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment. The notice should inform the permittee of the charges on which the citation would be based, if issued, and afford him a period of 10 days from the date of the notice, or such longer period as the appropriate TTB officer deems necessary, in which to submit proposals of settlement to the appropriate TTB officer. Where informal settlement is not reached promptly because of inaction of the permittee or proposals are made for the purpose of delay, a citation shall be issued in accordance with §§ 71.55 and 71.56.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-199, 50 FR 9196, Mar. 6, 1985; T.D. ATF-244, 51 FR 45763, Dec. 22, 1986; T.D. ATF-374, 61 FR 29957, June 13, 1996]

#### § 71.38 Limitation on informal settlement.

Where the evidence is conclusive and the nature of the violation is such as to preclude any settlement short of suspension, revocation or annulment, or the violation is of a continuing character that necessitates immediate action to protect the public interest, or where the appropriate TTB officer believes that any informal settlement of the alleged violation will not insure future compliance with the laws and regulations, or in any similar case where

the circumstances are such as to clearly preclude informal settlement, and the appropriate TTB officer so finds and states his reasons therefor as provided in § 71.35, he may restrict settlement to that provided in § 71.71.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-199, 50 FR 9197, Mar. 6, 1985; T.D. ATF-374, 61 FR 29957, June 13, 1996]

### Subpart E—Grounds for Citation

#### § 71.45 Basic permits.

Whenever the appropriate TTB officer has reason to believe that any person has willfully violated any of the conditions of his basic permit, or has not in fact or in good faith engaged in the operations authorized by such permit for a period of more than two years, or that such permit was procured through fraud, misrepresentation or concealment of material facts, he shall issue a citation for the suspension, revocation or annulment of such permit, as the case may be.

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-374, 61 FR 29957, June 13, 1996]

#### § 71.46 Suspension and revocation of tobacco permits.

Whenever the appropriate TTB officer has reason to believe that any person has not in good faith complied with any of the provisions of 26 U.S.C. chapter 52 or regulations issued thereunder, or has not complied with any provision of 26 U.S.C. which involves intent to defraud, or has violated any of the conditions of his permit, or has failed to disclose any material information required, or has made any materially false statement, in the application for his permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating

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to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue a citation for the revocation or suspension of such permit.

(72 Stat 1421, as amended; 26 U.S.C. 5713)

[T.D. TTB-75, 74 FR 14491, Mar. 31, 2009]

### **§ 71.48 Operating permits and industrial use permits.**

Whenever the appropriate TTB officer has reason to believe that any person who has an operating permit or an industrial use permit:

(a) Has not in good faith complied with the provisions of 26 U.S.C. chapter 51 or enabling regulations; or

(b) Has violated the conditions of such permit; or

(c) Has made any false statement as to any material fact in his application therefor; or

(d) Has failed to disclose any material information required to be furnished; or

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of any offense under 26 U.S.C. punishable as a felony or of any conspiracy to commit such an offense; or

(f) Is (in the case of any person who has a permit to procure or use distilled spirits free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, or to procure, deal in, or use specially denatured distilled spirits) by reason of his operations, no longer warranted in procuring or using the distilled spirits or specially denatured distilled spirits authorized by his permit; or

(g) Has, in the case of any person who has a permit to procure, deal in, or use specially denatured distilled spirits, manufactured articles which do not correspond to the descriptions and limitation prescribed by law and regulations; or

(h) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years;

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He may issue a citation for the revocation or suspension of such permit.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

[T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55846, Sept. 28, 1979; T.D. ATF-199, 50 FR 9196 and 9197, Mar. 6, 1985; T.D. ATF-374, 61 FR 29957, June 13, 1996]

### **§ 71.49 Applications for basic permits.**

If, upon examination of any application (including a renewal application) for a basic permit, the appropriate TTB officer has reason to believe that the applicant is not entitled to such permit he shall issue a citation for the contemplated disapproval of the application.

[T.D. 6954, 33 FR 6814, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975; as amended by T.D. ATF-374, 61 FR 29957, June 13, 1996]

### **§ 71.49a Applications for operating permits and industrial use permits.**

If, on examination of an application for an operating permit or an industrial use permit, the appropriate TTB officer has reason to believe:

(a) In case of an application to withdraw and use distilled spirits free of tax, the applicant is not authorized by law or regulations issued pursuant thereto to withdraw or use such distilled spirits; or

(b) The applicant (including in the case of a corporation, any officer, Administrator, or principal stockholder and, in the case of a partnership, a partner) is, by reason of the applicant's business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. chapter 51 or implementing regulations; or

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with his application; or

(d) The premises on which the applicant proposes to conduct the business are not adequate to protect the revenue;